

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Thursday, November 4, 2021

Hearing Room 1545

8:00 AM

2:00-00000

Chapter

- #1.00** Hearings in Judge Bason's courtroom (1545) are now simultaneously (1) IN PERSON in the courtroom, (2) via ZOOMGOV video, and (3) via ZOOMGOV telephone. You are free to choose any of these options, except that evidentiary hearings/trials must be in person in the courtroom (unless otherwise ordered). You do not need to call Chambers for advance approval or notice. ZoomGov appearances are free.

ZoomGov Instructions for all matters on today's calendar:

Meeting ID: 161 577 0017

Password: 731562

Meeting URL: <https://cacb.zoomgov.com/j/1615770017>

Telephone: +1 669 254 5252 or +1 646 828 7666 or 833 568 8864 (Toll Free)

Please connect at least 5 minutes before the start of your hearing, and wait with your microphone muted until your matter is called.

CHAPTER 13: Persons needing to contact the Chapter 13 Trustee's attorney, either prior to the hearing or during a recess, can call Kaleen Murphy, Esq. at (213) 996-4433.

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:19-23194 Crystal J Winters

Chapter 13

#1.00 Hrg re: Motion under Local Bankruptcy Rule 3015-1 (n)
and (w) to modify plan or suspend plan payments

Docket 68

Tentative Ruling:

Appearances required, absent either (1) an agreement with the Chapter 13 Trustee's office to further continue this matter or (2) withdrawal of the motion. There is no tentative ruling, but the parties should be prepared to address the issues raised by the Chapter 13 Trustee (dkt. 74).

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Party Information

Debtor(s):

Crystal J Winters

Represented By

Stephen S Smyth

Andrew Edward Smyth

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:20-10551 Carol Ann Harris

Chapter 13

#2.00 Hrg re: Motion under Local Bankruptcy Rule 3015-1 (n)
and (w) to modify plan or suspend plan payments

Docket 80

***** VACATED *** REASON: Resolved. See dkt. 94 & 91.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carol Ann Harris

Represented By
Edmond Richard McGuire

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:16-25325 Karen Deshawn Taylor

Chapter 13

#3.00 Hrg re: Motion to Dismiss or Convert Bankruptcy
Case to Chapter 7 Under 11 U.S.C. § 1307(c))

Docket 135

Tentative Ruling:

Grant as set forth below.

Appearances are not required.

Key documents reviewed: Motion of Real Time Resolutions, Inc. ("Real Time") to Dismiss or Convert (dkt. 135); Debtor's Opposition (dkt. 139); Real Time's Reply (dkt. 140); Debtor's Schedules (dkt. 1, 21, 63)

Analysis: Dismissal is required for the reasons set forth in the motion and reply papers. The tentative ruling is that dismissal is more appropriate than conversion in view of the encumbered nature of Debtor's assets and the apparent lack of benefit to creditors or Debtor from chapter 7.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Party Information

Debtor(s):

Karen Deshawn Taylor

Represented By
Lionel E Giron

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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CONT... Karen Deshawn Taylor

Chapter 13

**United States Bankruptcy Court
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Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:21-16805 Tri Van Nguyen and Tuyen Thanh Chau

Chapter 13

#4.00 Hrg re: Application of attorney for debtor for additional fees and related expenses in a pending ch. 13 case subject to a rights and responsibilities agreement

Docket 21

Tentative Ruling:

Appearances required.

There is no tentative ruling, but at the hearing Debtors' counsel is directed to address why Debtors' purported signatures on the 9/1/21 fee application (dkt. 21, p.5) are dated 12/12/17, and whether counsel is using photocopies of earlier signatures. See Order (dkt. 27). In addition, in this Court's review of this case prior to setting this hearing, this Court noted that one of Debtors' signatures, on a declaration about employment income (dkt. 7, p.2), bears no resemblance to that Debtor's signature on other documents. Compare, e.g., dkt. 1 pp.6 & 8; dkt. 3 p.14; dkt.4 p.6; dkt. 21 p.5. This further calls into question whether Debtors' signatures are being properly presented.

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Party Information

Debtor(s):

Tri Van Nguyen

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Tuyen Thanh Chau

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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CONT... Tri Van Nguyen and Tuyen Thanh Chau

Chapter 13

**United States Bankruptcy Court
Central District of California
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8:30 AM

2:21-16682 Aldair Ascencio-Aguayo

Chapter 13

#5.00 Hrg re: Motion Objecting to the Proof of Claim 2 Filed
by Claimant Harvest Small Business Finance, LLC

Docket 20

***** VACATED *** REASON: Withdrawal of Objection to Claim Filed
10/29/21 (Dkt. 24)**

Tentative Ruling:

Party Information

Debtor(s):

Aldair Ascencio-Aguayo

Represented By
Ghada Helena Philips

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

8:30 AM

2:21-15231 Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

#6.00 Hrg re: Debtor's Objection to Claim Number 9
by Claimant Pinnacle Credit Services, LLC

Docket 19

***** VACATED *** REASON: This matter is mooted by the withdrawal of
the proof of claim. See dkt. 36.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nilo Gonzaga Jara

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Delia Extra Jara

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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8:30 AM

2:21-15231 Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

#7.00 Hrg re: Debtor's Objection to Claim Number 10
by Claimant Cavalry SPV I, LLC

Docket 20

Tentative Ruling:

Please see the tentative ruling for Debtor's Objection to Claim 12-2 (Calendar No. 9, 11/4/21 at 8:30 a.m.).

Party Information

Debtor(s):

Nilo Gonzaga Jara

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Delia Extra Jara

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:21-15231 Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

#8.00 Hrg re: Debtor's Objection to Claim Number 11
by Claimant Cavalry SPV I, LLC

Docket 21

Tentative Ruling:

Please see the tentative ruling for Debtor's Objection to Claim 12-2 (Calendar No. 9, 11/4/21 at 8:30 a.m.).

Party Information

Debtor(s):

Nilo Gonzaga Jara

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Delia Extra Jara

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:21-15231 Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

#9.00 Hrg re: Debtor's Objection to Claim Number 12
by Claimant Cavalry SPV I, LLC

Docket 22

Tentative Ruling:

Continue to 12/9/21 at 8:30 a.m. to address the following issues.

Appearances are not required on 11/4/21. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Reasons for continuance: Debtors' objections to claims 10-1, 11-1, and 12-1 (dkts. 20, 21, 22) have each been filed without the required cost/benefit analysis.

Lack of cost/benefit analysis. The posted Procedures of Judge Bason (available at www.cacb.uscourts.gov) provide:

§ 502: claim objections & cost/benefit analysis. When objecting to claims, be sure to include an analysis of why the costs of preparing and litigating the claim objection (administrative expenses) do not exceed the anticipated benefits (reductions in claims). For example, if the claim at issue is a dischargeable nonpriority claim, and the anticipated dividend is small or 0%, then (a) the attorney fees incurred in prosecuting an objection probably will exceed the benefit to the bankruptcy estate/creditors, (b) Debtor typically is harmed by replacing a (dischargeable) general unsecured claim with an administrative expense, and (c) only the lawyer benefits (at the expense of both creditors and Debtor).

No later than 7 days after the date of this hearing the movant must file either:

(1) a supplemental declaration explaining why the attorney fees for this objection are justified (including supporting evidence, such as a copy of the plan showing the projected dividend to the claimant, and a calculation

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CONT... Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

comparing that projected dividend against the attorney fees related to this claim objection), or

(2) a withdrawal of the claim objection.

No fees on this matter, absent specific authorization. Counsel is directed not to charge any fees on this matter (including all past, present and future work related to this claim objection), and to return any fees received on this matter, unless and until this Court expressly finds: "Counsel has provided a cost/benefit analysis that is sufficient for purposes of the Posted Procedures of Judge Bason regarding claim objections." It is counsel's responsibility to include the quoted phrase, if warranted, in the proposed order on this claim objection.

This Court does not have the capacity to monitor all fee applications to assure compliance with the foregoing limitation on fees. But if counsel is found to have disregarded this limitation then this Court may impose sanctions.

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Party Information

Debtor(s):

Nilo Gonzaga Jara

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Delia Extra Jara

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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Central District of California
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2:21-15231 Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

#10.00 Hrg re: Debtor's Objection to Claim Number 13
by Claimant LVNV Funding, LLC

Docket 23

***** VACATED *** REASON: This matter is mooted by the withdrawal of
the proof of claim. See dkt. 38.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nilo Gonzaga Jara

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Delia Extra Jara

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:21-15231 Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

#11.00 Hg re: Debtor's Objection to Claim Number 14
by Claimant LVNV Funding, LLC

Docket 24

***** VACATED *** REASON: This matter is mooted by the withdrawal of
the proof of claim. See dkt. 39.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nilo Gonzaga Jara

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Delia Extra Jara

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:21-15231 Nilo Gonzaga Jara and Delia Extra Jara

Chapter 13

#12.00 Hrg re: Debtor's Objection to Claim Number 15
by Claimant LVNV Funding LLC

Docket 25

***** VACATED *** REASON: This matter is mooted by the withdrawal of
the proof of claim. See dkt. 37.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nilo Gonzaga Jara

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Delia Extra Jara

Represented By
Hasmik Jasmine Papian

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:20-18003 Yolanda Espinosa

Chapter 13

#13.00 Cont'd hrg re: Objection to Proof of Claim #8
filed by Bank of America, N.A.
fr. 1/21/21, 03/18/21, 5/20/21, 07/22/21, 9/9/21

Docket 23

Tentative Ruling:

Tentative Ruling for 11/4/21:

Appearances required.

At the hearing on 9/9/21, this Court was persuaded to continue this matter to this date to allow the parties to discuss Debtor's proposed plan. There is no tentative ruling, but the parties should be prepared to address the status of their dispute resolution and, if no progress has been made, whether this Court should continue this matter in order for the adversary proceeding (Adv. No. 2:21-ap-01183-NB) to resolve the parties' disputes. In addition, the tentative ruling is to set a **deadline of 11/18/21** for Debtor's counsel to file a declaration with a cost/benefit analysis.

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

[INTERIM TENTATIVE RULINGS OMITTED]

Tentative Ruling for 1/21/21:

Continue to 3/18/21 at 8:30 a.m. so that claimant can commence its contemplated adversary proceeding or the parties can reach a consensual resolution. Counsel for Debtor is cautioned about the need to exercise reasonable judgment in how much to expend in paying attorney fees instead of paying creditors. Appearances are not required on 1/21/21.

(1) Reasons for continuance

This Court has reviewed Debtor's motion (dkt. 23), the claimant's

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CONT... Yolanda Espinosa

Chapter 13

opposition (dkt. 30), and Debtor's reply (dkt. 31). Although Debtor's reply argues that the claimant has not cited authority, that puts the cart before the horse. Debtor is the objecting party and Debtor has not cited any authority that a deed of trust on real property is void or unenforceable as a matter of law when it includes the correct street address and a conflicting legal description for a particular parcel.

Alternatively, even if Debtor did not need to cite any such authority (which is incorrect), this Court's understanding of California law is contrary to Debtor's position. Based on unrelated litigation before this Court, the general rule appears to be that a transfer of an interest in property "is not void for uncertainty because of errors or inconsistency in some of the particulars of the description" if it is possible "from the whole description to ascertain and identify the land intended to be conveyed." *Gyurec v. Bank of New York Trust Co., NA* (Cal. Ct. App., 4th Dist., 2014) (unpublished, Case No. No. G050083) (quoting *Leonard v. Osburn*, 169 Cal. 157, 160 (1915)) (correct street address sufficient for deed of trust's validity, even though it incorrectly described property as located in "Township 4 North" instead of Township 4 South"). See *also* Cal. Code Civ. P. 2077 ("Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false, does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.").

Based on the foregoing, it appears appropriate to continue this hearing for the parties either to litigate the issue or, perhaps, agree to a consensual resolution.

(2) Expenditure of funds on attorney fees

Given the apparent principles of California law (summarized above), Debtor's counsel is reminded of the need to do a cost/benefit analysis in determining whether it is worth expending funds on attorney fees that otherwise would go to pay creditors. Debtor's counsel is reminded that the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) state:

§ 502: claim objections & cost/benefit analysis. When objecting to claims, be sure to include an analysis of whether the costs of preparing and litigating the claim objection (administrative expenses) do not exceed the anticipated benefits (reductions in claims). For example, if the anticipated dividend is small or 0%

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Yolanda Espinosa

Chapter 13

then the attorney fees incurred in prosecuting your claim objection to any general unsecured claim probably will exceed the benefit to the bankruptcy estate/debtor, so filing that objection would be a waste of the bankruptcy estate's (and everyone else's) resources (unless, for example, the claim is nondischargeable, in which event the attorney fees might well be justified).

Debtor's claim objection does not include any cost/benefit analysis. If Debtor decides to continue with the claim objection, this Court will set a deadline at a future hearing for Debtor's counsel to file a cost/benefit declaration.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Yolanda Espinosa

Represented By
Barry E Borowitz

Movant(s):

Yolanda Espinosa

Represented By
Barry E Borowitz

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
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Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:16-19801 Esteban Diaz

Chapter 13

#14.00 Cont'd hrg re: Debtor's Motion to Approve Loan Modification
fr. 10/7/21

Docket 68

Tentative Ruling:

Tentative Ruling for 11/4/21:

Grant as set forth below.

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Analysis: At the hearing on 10/7/21, this Court was persuaded to continue this matter to this date in order for Debtor to file supplemental papers in support of the Motion to Approve Loan Modification (dkt. 68), detailing how Debtor's loan was to be modified. Based on this Court's review of the Supplemental Declaration in Support of Debtor's Motion to Approve Loan Modification (dkt. 71), the tentative ruling is to grant the Debtor's motion and approve the loan modification.

Tentative Ruling for 10/7/21:

Deny without prejudice. Appearances are not required.

Analysis: No proposed Loan Modification is attached to Debtor's motion (dkt. 68), only a "Partial Claims Mortgage" with no indication of how the loan itself has been modified. It is unclear what Debtor wants this Court to approve.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7

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Esteban Diaz

Chapter 13

days after the hearing date (per LBR 9021-1(b)(1)(B)).

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Party Information

Debtor(s):

Esteban Diaz

Represented By
Samer A Nahas

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:21-10907 Martin G Torres

Chapter 13

#15.00 Cont'd hrg re: Motion Objecting to Claim No 1-1 on the Bankruptcy Court's Claims Register of Trinity Financial Services LLC, Request Claim to be Disallowed fr. 07/22/21, 10/7/21

Docket 29

Tentative Ruling:

Tentative Ruling for 11/4/21:

Deny the motion/claim objection, for the reasons set forth below.

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Analysis

At the hearing on 10/7/21 this Court was persuaded to continue this matter to today to allow the parties to file supplemental papers. The tentative ruling is to deny the motion/claim objection, based on this Court's review of Debtor's Supplemental Brief (dkt. 45), Trinity's Supplemental Response (dkt. 46), and Debtor's Supplemental Reply (dkt. 48), as well as the original motion/claim objection (dkt. 29) and Trinity's original opposition (dkt. 34), and the reasons set forth below.

(1) Adversary proceeding required

Debtor argues that an adversary proceeding is not required in this matter and that, instead, the dispute is more appropriately resolved as a "request to determine the amount of a secured claim" under Rule 3012 (Fed. R. Bankr. P.). See dkt. 45, p. 3. In support of this assertion, Debtor cites case law stating that remedies for violations of the Truth in Lending Act ("TILA") do not include contract invalidation, and emphasizes the alleged wrongdoings of both Trinity and Magnus. *Id.*

Trinity again argues that Debtor's objection seeks "to determine the validity, priority, or extent of a lien or other interest in property" within the meaning of Rule 7001(2) and that "a party in interest shall not include a

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CONT... Martin G Torres

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demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding." Rule 3007(b) (Fed. R. Bankr. P.) (emphasis added). See *dk. 46*, pp.8-9. Trinity also states that Debtor's assertion regarding the Court's discretion to rescind a security interest and subsequent request to treat Trinity as an unsecured creditor are both further evidence of Debtor's attempt to invalidate Trinity's claim. *Id.*

The tentative ruling is that Trinity's position is more persuasive, and that an adversary proceeding is required. In addition, this Court notes that Debtor's reply brief suggests that "an equitable remedy may be required to promote fairness to both parties," and "equitable relief" generally requires an adversary proceeding. See *dk. 48*, p. 1; Rule 7001(7) (Fed. R. Bankr. P.).

(2) Alternatively, the tentative ruling is to deny the motion/claim objection on the merits

This Court recognizes that Debtor might well have been confused and misled at the inception of the loan, especially given any lack of understanding of English. In addition, the lack of any monthly statements might have perpetuated any misunderstanding by Debtor that the papers he signed had the effect of creating two loans instead of one.

But the tentative ruling is that Debtor has not established a specific legal claim based on those alleged facts. (In addition, this Court notes that Debtor's declaration at *dk. 48*, pp.4-5, is in English with no indication that it was translated for Debtor. This Court does not rely on that fact in this tentative ruling; but in the event that Debtor decides to prosecute this matter in an adversary proceeding, he may need to address that issue.)

Without limiting the generality of the foregoing tentative ruling that Debtor has not established a specific legal claim, this Court notes the following examples. With respect to the "periodic statement rule" (aka "Reg Z") Trinity cites authority that (i) neither Trinity nor its immediate predecessor in interest ("Trojan") are subject to the rule; (ii) that rule is not retroactive so it does not apply prior to October 2017; and, (iii) although that leaves a window of time in which the originator of the loan ("Wilmington") may have been subject to the periodic statement rule before assigning the loan to Trinity in 2018 (*Supp. Opp.*, *dk. 46*, p.2:22-25), there is a one year statute of limitations, so no such claim can be asserted. See *id.* pp. 7:14-9:4. Debtor cites no contrary authority. See Debtor Motion/Claim Obj. (*dk. 29*); Debtor

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CONT...

Martin G Torres

Chapter 13

Supp. (dkt. 45); Debtor Reply (dkt. 48) (all *passim*).

True, it is conceivable that, even if periodic statements were not expressly required by law, the failure to send them could be grounds for some sort of laches or similar argument. But Debtor cites only very general authority that California recognizes the doctrine of laches: a single copyright case that has no similarity to Debtor's situation. See Motion/Claim Obj. (dkt. 29), p.8:22-28 (citing *Danjaq, LLC v. Sony Corp.*, 263 F.3d 942, 950-51 (9th Cir. 2001)). See also Debtor Supp. (dkt. 45), p.10:3-10 (arguing that 2d DOT has "become a nullity due to the passage of time," but not citing any authority); Debtor Supp. Reply (dkt. 48) (*passim*).

As to the California Translation Act, Debtor argues that the statute applies (see Debtor Supp., dkt. 45, pp.5:16-6:13) because the loan allegedly "was negotiated by a real estate broker." But Trinity cites authority that any such real estate broker must be the one who actually makes the loan out of the real estate broker's own funds (see Trinity Supp., dkt. 46, p.7:3-13) and there is no evidence of any such facts, nor would that be typical, based on the authority cited by Trinity. See *id*.

(3) Conclusion. For the foregoing reasons, this Court tentatively concludes that neither the moving papers nor the supplemental briefs establish a sufficient basis to object to Trinity's claim. See *generally In re Heath*, 331 B.R. 424 (9th Cir. BAP 2005) (sufficiency of claim objections) and *In re Campbell*, 336 B.R. 430 (9th Cir. BAP 2005) (same). Accordingly, the tentative ruling is to overrule Debtor's claim objection without prejudice.

Proposed order(s): Unless otherwise ordered, Trinity is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby adopting it as this Court's actual ruling.

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Tentative Ruling for 10/7/21:

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CONT... **Martin G Torres**
Appearances required.

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The mediator reports (dkt. 43) that this matter has not settled. The parties are directed to meet and confer regarding a briefing schedule for all outstanding issues on this claim objection.

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Statement re Revised Tentative Ruling for 7/22/21:

The only revision to the tentative ruling posted on 7/21/21 at approximately 12:16 p.m. is to add the word "not" (emphasized below) in the following excerpt from part "(5)" of the tentative ruling:

True, it is possible that other paragraphs of section 1632(b) might apply. See, e.g., section 1632(b)(4) ("Notwithstanding paragraph (2), ..."). But Debtor does not argue the application of any such other paragraphs. [Emphasis added.]

Revised Tentative Ruling for 7/22/21:

Appearances required.

(1) Background

The facts are not entirely clear, but they appear to be as follows. Debtor obtained what he allegedly thought was a single loan from First Magnus Financial Corporation ("Magnus"). In fact, the loan documents apparently reflected two loans from Magnus: one secured by a first lien, which Debtor has been paying, and another loan secured by a second lien, for which Debtor was never sent monthly statements or other communications, and on which he made no monthly payments for many years.

More recently, the successor in interest as holder of the junior loan, Trinity Financial Services, LLC ("Trinity"), has initiated collection efforts. Debtor attempted to enter into a loan modification, and made three payments of \$600.00 as part of that attempt, but no loan modification was made and Trinity initiated foreclosure proceedings.

Debtor filed this bankruptcy case to stop the foreclosure and address

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his financial obligations. Debtor has now objected to Trinity's claim.

(2) An adversary proceeding may be required, because of *some* of the arguments in the claim objection

Trinity asserts (dkt. 34, pp.1:24-25 *and* 3:16-22) that Debtor's claim objection must be brought in the form of an adversary proceeding, and Trinity asserts that it has been prejudiced by not having the amount of time to respond that it would have in an adversary proceeding. Trinity appears to be correct that an adversary proceeding is required.

Trinity argues that the objection seeks "to determine the validity, priority, or extent of a lien or other interest in property" within the meaning of Rule 7001(2) (Fed. R. Bankr. P.) (emphasis added). As Trinity points out, no party in interest may "include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding." Rule 3007(b) (Fed. R. Bankr. P.).

On the one hand, *most* of Debtor's arguments focus on the promissory note held by Trinity, not its lien, so those portions of Debtor's claim objection would not appear, by themselves, to require any adversary proceeding. On the other hand, part of Debtor's claim objection argues that the lien securing the promissory note has been "extinguished by the lapse of time" (dkt. 29, p.7:14) and that enforcement of any power of sale "is barred by the Statute of Limitations." *Id.*, p.8:20-21. The latter arguments do appear to challenge the "validity" of the lien and therefore, if Debtor presses forward with those arguments, an adversary proceeding appears to be required.

(3) It is unclear whether Debtor will proceed with the arguments challenging the validity of the lien, so an adversary proceeding might not be required

Debtor's arguments for a time bar appear to rest on the assumption that the "last transaction and payment occurred on December 7, 2006, well past the [alleged statute of limitations period]." Claim Obj. (dkt. 29), p.9:7-9. But, according to Trinity, Debtor made three payments of \$600.00 each, received on June 3, 2020, June 29, 2020, and July 28, 2020, "as part of an unsuccessful loan modification application." Trinity Resp. (dkt. 34), p.2:5-8 *and attached* Madden Decl. para.4.

Therefore, it appears that Debtor the time bar arguments might be moot, unless Debtor can amend his arguments to address why those three \$600.00 payments should not count. In other words, on the present record, it

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appears that there is a possibility that no adversary proceeding will be required. For that reason, and for the sake of completeness, this tentative ruling proceeds to address the parties' other arguments.

(4) Burden of proof

Regarding burdens of proof, the parties are referred to prior decisions discussing the shifting burdens. See *In re Orozco*, 2017 WL 3126797 (Bankr. C.D. Cal.) (Case No. 2:13-bk-15745-NB, dkt. 132), and *In re Beoglyan* (Case No. 2:13-bk-22883-NB, dkt. 141).

(5) The California Translation Act appears to be applicable, but Debtor appears not to have any feasible remedy under that act

Debtor alleges that the loan was negotiated in Spanish but he was not provided with a Spanish translation of the loan documents. He argues that this violated the California Translation Act (Cal. Civ. C. 1632 et seq.). See Objection (dkt. 29), pp. 4:1-5:10.

Trinity responds that this act "specifically exempts loan transactions secured by real property. See California Civil Code Section 1632(a)(2) [sic]." Trinity Resp. (dkt. 34), p.2:19-22. Trinity apparently means section 1632(b)(2) (section 1632(a)(2) contains legislative findings of fact about the diversity of languages in California).

Section 1632(b) provides that any person engaged in a business who negotiates various types of contracts or agreements primarily in Spanish shall deliver to the counterparty (Debtor) "a translation of the contract or agreement" in Spanish. One such type of contract or agreement is for a loan "secured other than by real property." Section 1632(b)(2) (emphasis added).

True, it is possible that other paragraphs of section 1632(b) might apply. See, e.g., section 1632(b)(4) ("Notwithstanding paragraph (2), ..."). But Debtor does not argue the application of any such other paragraphs.

Accordingly, on the current record it appears that section 1632 is inapplicable. In addition, Trinity argues that the remedy under that act (Cal. Civ. C. 1632(k)) is for the aggrieved person to "rescind" the contract or agreement, and this "requires that the Debtor be able to tender payment in full to [Trinity]," which Debtor has not offered to do. See Trinity Resp. (dkt. 34), pp.2:23-3:2 (citing authority). On the present record, this also appears to be accurate.

In passing, Debtor cites section 1632.5, which does apply to mortgage

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loans. But by the statute's own terms any action for violation of that section "may only be brought by a licensing agency or by the Attorney General," and that section "shall not be construed to create or enhance any claim, right of action, or civil liability." Cal. Civ. C. 1632.5(k) *and* (l).

For the foregoing alternative reasons, it appears that Debtor cannot successfully object to Trinity's claim based on the California Translation Act.

(6) Other objections

Debtor objects that Trinity (and its predecessor in interest, Magnus) violated the "Periodic Statement Rule" by not sending monthly statements. See Claim Obj. (dkt.29), pp. 5:11-6:11. Debtor also argues that a 10-day notice of default required by the parties' contract was not sent (*id.*, p.4:20-25), that the claim upon the promissory note was abandoned and therefore is unenforceable (*id.*, p.6:12-27), and that Trinity's claim should be barred by the doctrine of laches. *Id.*, pp. 8:22-9:4.

Trinity responds that "the periodic statement rule does not apply to Trinity, because Trinity is a small servicer within the meaning of 12 CFR Section 1026.41(e)(ii)" and alternatively that Debtor "has waived his ability to enforce the periodic statement rule by tendering payments in 2020." Trinity Resp. (dkt. 34), p.3:3-9. As for laches, Trinity argues that "Debtor's proffer of payments for a proposed forbearance make such an argument moot." *Id.*, p.3:10-11. Trinity does not respond to the alleged failure to send a 10-day notice of default.

The tentative ruling is that these factual and legal issues have not been fully briefed and addressed. Accordingly, this tentative ruling expresses no views on these issues at this time.

(7) Mediation

The tentative ruling is to order the parties to mandatory mediation. Not only is mediation helpful in many matters, but this particular matter appears to include both factual and legal issues that are somewhat complex and could involve substantial costs and delays for both sides if they were fully litigated. The tentative ruling is to set a **deadline of 8/5/21** to lodge a proposed mediation order.

Meanwhile, the tentative ruling is not to adopt any of the other tentative rulings set forth above, and instead to preserve both parties' rights on all issues, and to continue this hearing to **9/9/21 at 8:30 a.m.** If the parties have

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not reached an agreement by that continued hearing, this Court anticipates setting a schedule for filing any appropriate papers.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see the Posted Procedures of Judge Bason (available at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's Procedures, **hearings are now simultaneously (1) IN PERSON in the courtroom, (2) via ZOOMGOV video, and (3) via ZOOMGOV telephone**. You are free to choose any of these options, except that evidentiary hearings/trials must be in person in the courtroom (unless otherwise ordered). You do not need to call Chambers for advance approval or notice. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Martin G Torres

Represented By
Axel H Richter

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
Judge Neil Bason, Presiding
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Thursday, November 4, 2021

Hearing Room 1545

8:30 AM

2:20-18844 Graciela Gomez

Chapter 13

#16.00 Hrg re: Application for Compensation for Christine A Kingston

Docket 74

Tentative Ruling:

Appearances required.

There is no tentative ruling. Applicant is directed to appear to address the issues raised in the Order setting this matter for hearing. See dkt. 79, p. 2, para. "(5)".

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Party Information

Debtor(s):

Graciela Gomez

Represented By
Christine A Kingston

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1545

8:30 AM

2:21-18011 Elvia Heredia

Chapter 13

#17.00 Hrg re: Motion for relief from stay [RP]

CAM XI TRUST
vs
DEBTOR

Docket 11

Tentative Ruling:

Appearances required.

Grant in substantial part, with the primary exception being that this Court is not granting any requested termination of the automatic stay in any other pending or past bankruptcy cases, all as set forth below. This tentative ruling is without prejudice to Movant filing an adversary proceeding seeking relief of the type described in *In re Ervin* (Bankr. C.D. Cal., Case No. 14-bk-18204-NB, docket no. 311), or otherwise seeking additional relief.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling.

Key documents reviewed: Motion for relief from automatic stay (dkt. 11, "R/S Motion"); Emergency Application for R/S Motion (dkt. 12, "Emergency App"); Order Setting Hearing on Motion (dkt. 13, "Hearing Order"), proof of service of the Hearing Order (dkt. 15).

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1), (d)(2), and (d)(4).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

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Relief notwithstanding *future* bankruptcy cases.

Grant the following relief pursuant to 11 U.S.C. 362(d)(4) and the legal analysis in *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017), and/or *In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31), as applicable:

If this order is duly recorded in compliance with applicable State laws governing notices of interests or liens in the property at issue, then no automatic stay shall apply to such property in any bankruptcy case purporting to affect such property and filed within two years after the date of entry of this order, unless otherwise ordered by the court presiding over that bankruptcy case.

For the avoidance of doubt, any acts by the movant to obtain exclusive possession of such property shall not be stayed, including any eviction actions, through and including any lockout or other enforcement by the Sheriff or other authorized legal authority.

Note: Per the Posted Procedures of Judge Bason (available at www.cacb.uscourts.gov) this Court's order will state that the Court "does not make" a finding that Debtor was involved in the "scheme" referenced in section 362(d)(4), unless there is sufficient evidence that Debtor was involved and Debtor is given clear notice that the movant seeks an express finding that Debtor was involved. The tentative ruling in this particular case is that there is sufficient evidence and notice.

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If you are making an appearance, note that hearings are now simultaneously (1) in person in the courtroom, (2) via ZoomGov video, and (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Party Information

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CONT... Elvia Heredia

Chapter 13

Debtor(s):

Elvia Heredia

Pro Se

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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Central District of California
Los Angeles
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9:30 AM

2:00-000000

Chapter

**#1.00 PLEASE BE ADVISED THAT THE CHAPTER 13 9:30 AM
CONFIRMATION CALENDAR CAN BE VIEWED ON THE
COURT'S WEBSITE (www.cacb.uscourts.gov) UNDER:
JUDGES>BASON, N.>CHAPTER 13>CONFIRMATION HEARINGS CALENDAR**

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
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Thursday, November 4, 2021

Hearing Room 1545

11:00 AM

2:00-00000

Chapter

**#1.00 PLEASE BE ADVISED THAT THE CHAPTER 13 HEARINGS
at 11:00 AM CAN BE VIEWED ON THE COURT'S WEBSITE
(www.cacb.uscourts.gov) UNDER: JUDGES>BASON, N.>CHAPTER 13**

Docket 0

Tentative Ruling:

- NONE LISTED -